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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 599

M. H. DEMKO as Administratrix of the Estate of M. I. Anglin and as Trustee for M. I. Anglin, et al.,

Petitioners,

vs.

LAUDERDALE-BY-THE-SEA, a municipal corporation of the State of Florida

Respondent,

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA.

ALFRED P. DRAPER,
Gary, Indiana

JOSEPH A. FITZSIMMONS,
Fort Lauderdale, Florida

Attorneys for Petitioners.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. ___

M. H. DEMKO as Administratrix of the Estate of M. I. Anglin and as Trustee for M. I. Anglin, et al.,

Petitioners,

vs.

LAUDERDALE-BY-THE-SEA, a municipal corporation of the State of Florida

Respondent,

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA.

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of Florida, entered in the above entitled case on October 14, 1952

Opinions Below

The opinion of the trial court and of the Special Master in

chancery are unreported, but appear in the record. (R. 53, 59) The opinion of the Supreme Court of Florida (R. 211) is reported in — Fla.—, 60 So. 2d. 619. (See App., page 9.)

Jurisdiction

The final decree of the Supreme Court of Florida was entered on October 14, 1952 (R. 227.) The jurisdiction of this Court is invoked under 28 U.S.C.A., Section 1257 (3).

The constitutional question involved was first raised by the filing on May 23, 1949 of a motion to dismiss the amended bill of complaint. (R. 25) which motion was denied on September 9, 1949 (R. 30), and by the filing on October 27, 1951 of a petition for rehearing (R. 60) which petition was denied on November 26, 1951 (R. 79). The question was raised in the Supreme Court of Florida by Assignments of error Nos. 7 and 8, (R. 83) and by petition for rehearing timely filed (R. 212) which petition was denied on October 14, 1952 (R. 226). That the question was raised and passed upon by the Supreme Court of Florida is evidenced by the certificate by the Chief Justice of said Court dated December 16, 1952, (R. 239). Mandate stayed, time extended 2/11/53. (R. 234-240)

Questions Presented

(1) Upon abolishment of a municipal corporation owning property in its private or proprietary capacity, and not being indebted, do the inhabitants of the former incorporated area acquire vested rights in the real and personal property so held?

(2) Can the Legislature retroactively 14 years later vest in a new municipal corporation properties of an abolished municipality held in its proprietary capacity?

(3) Will the judgment of a State Court be upheld and confirmed where it does not conform to any allegations contained in the pleadings and not supported by any proof?

(4) Can a municipality be decreed to hold property of another under a resulting trust?

(5) Where a determinable fee title is conveyed by deed containing automatic reverter clause effective upon date certain upon non-compliance with condition imposed, does title revest in grantor without necessity for reconveyance from conditional grantee?

Statutes Involved

Certified copies of the State statutes involved, Chapter 16531, Laws of Florida *1933* (Special Acts) abolished the former Town of Lauderdale-by-the- Sea, and Chapter 24658, Laws of Florida *1947*, (Special Acts) creating a new municipal corporation of the same name over the same but enlarged area were made exhibits in evidence, and the pertinent portions thereof are set out in the record filed in this Court. (R. 161, 165) (Appendix A, page 11.)

Statement

A bill to quiet title to Block 23, Lauderdale-by-the-Sea, Plat Book 6 page 2, public records of Broward County, Florida was filed by Lauderdale-by-the-Sea, a municipal corporation organized pursuant to Chapter 24658, Laws of Florida, 1947, (Special Acts) against M. I. Anglin, et al. alleging ownership thereof as successor in title to the former municipality of the same name abolished in 1933 by Chapter 16531, Law of Florida, 1933 (Special Acts), said bill was filed December 20, 1948. (R. 4) Defendants filed motion to dismiss alleging that under Chapter 24658 *supra*, Article 1, Section 5, only lands "dedicated for the use of the public for streets, highways, parks or public grounds" became vested in plaintiff. (R. 12) and alleged that the Legislature could not take the property of the former town held in its proprietary capacity, without violating the constitutional rights of the inhabitants of said former town. (R. 12) The motion to dismiss was granted but with leave to amend, the Chancellor holding that by Article 1, Sections 5 and 7, Chapter 24658, *supra*, the Legislature *intended* to vest

in the new municipality those assets of the old municipality then remaining undisposed of pursuant to Section 5 of Chapter 16531, Laws of 1933. (R. 23) Thereafter an amendment was filed to the bill and motion to dismiss was filed and denied (R. 24-30). Answers were filed alleging title in the defendants Demko and Lunsford as Trustees. (R. 32). The cause was referred to Special Master in chancery for trial (R. 43).

The Special Master before whom the cause was tried found that Chapter 24658, Article 1, Section 5, Laws of Florida 1947, (Special Acts) only vested the lands *dedicated* to the public for streets, highways, parks and other public lands in the new town. (R. 54) Also that plaintiff was not a purchaser without notice for a valuable consideration and could not rely upon the recording statute, Section 695.01 Florida Statutes, 1949. (R. 53) It was also found that any title to the subject land vesting in or held by the municipal corporation was held under a resulting trust (R. 53) The Special Master found that Lauderdale-by-the-Sea Development Company, predecessor in title to the defendants Demko and Lunsford, Trustees, had purchased the land in March, 1930 for valuable consideration, executed a purchase money mortgage encumbering said land, obtained a release to it from the lien of said mortgage, and paid taxes thereon. (R. 53-55) The Special Master recommended dismissal of the Bill with prejudice and that defendants be allowed to file counterclaim to quiet title. (R. 55) Defendants excepted conditionally to the latter recommendation as unnecessary. (R. 58) Plaintiff excepted to the Special Master's Report and recommendations, and the Chancellor entered final decree contrary to the Master's findings and recommendations. (R. 59) In the Final Decree the Chancellor held that Anglin (M. I. Anglin) *intended* to make an absolute gift of the land to the former municipality. (R. 59-60) The record does not show that M. I. Anglin ever held title, or ever intended to make a gift to the former town for any municipal purpose. The Chan-

cellor by said final decree held that title to the land involved passed to the former town in 1930 and not impressed with any trust. (R. 59-60)

The Supreme Court of Florida before whom the cause was argued En Banc, affirmed the final decree by opinion almost verbatim with said decree. (R. 211). Petition for rehearing was filed and denied. (R. 212, 226). The Mandate issued October 14, 1952 but has been stayed pending application for Writ of Certiorari. (R. 227, 235)

Specifications of Errors To Be Urged

The Supreme Court of Florida erred:

1. By affirming the final decree which was contrary to the Findings and recommendations of the Special Master, and did not conform to the allegations in the pleadings and was contrary to the proof adduced.
2. In failing to decree that Chapter 24658, Article 1, Sections 5 and 7, Laws of Florida, 1947 limited the vesting of title in the new municipal corporation to lands *dedicated* for public use for street, highways, parks and other public grounds, and did not apply to any non-dedicated lands formerly owned by the abolished municipality of the same name.
3. That said Court erred in failing to decree that upon dissolution of the former town and after payment of its debts, all real and personal property owned or held in its private or proprietary capacity was then held in trust for the inhabitants of the abolished town and their rights therein became vested in 1933 when said town was abolished.
4. In failing to reverse the final decree and quiet title to the subject property Block 23, in the defendants, M. H. Demko and R. F. Lunsford, as Trustees.
5. In failing to reverse said final decree and adjudicate that M. I. Anglin and Sarah A. Anglin, his wife, as inhabitants

of the abolished municipality in 1933, held undivided interest in all real and personal property of the former town owned or held by it in its private or proprietary capacity, remaining in the hands of the Trustees under Chapter 16531, Laws of 1933, after payment of all debts of the former municipality.

Reasons for Granting the Writ

1. The State court has decided a federal question of substance not heretofore expressly decided by this Court, and in a manner probably not in accord with pertinent decisions of this Court, as indicated in *Hunter* v. *Pittsburgh*, 207 US 161; and *Werlein* v. *City of New Orleans*, 177 US 390. The private or proprietary held property of a municipality is held in trust for the inhabitants thereof, and the Legislature cannot divest the municipality of its private property without compensation, and upon dissolution or abolishment of the municipality such private or proprietary held property, not required to pay debts, becomes vested in the inhabitants thereof. Chapter 16531, Laws of Florida 1933 abolishing the Town of Lauderdale-by-the-Sea recited that there were then less than 10 bona fide residents therein. (R. 161, 115-116) The lands involved were not acquired, held or used by the former town for any public purpose, and were therefore held in a proprietary capacity. (R. 127-128)

2. The Legislature of Florida by passage of Chapter 24658, Laws of Florida, 1947 could not divest the title and rights acquired by persons residing within a former municipality to lands owned in its proprietary capacity, and retroactively vest title in a new municipal corporation of the same name.

3. A decree of a State court that is not founded upon allegations contained in the pleadings and supported by competent proof will not be sustained. The decree must conform to the pleadings and proofs in the cause. The final decree sought to be reviewed, is predicated upon a presumed *intention* to make

a gift of land, by one not shown to ever have had title thereto, and no proof of any such gift or intention was proven or alleged in the pleadings. (R. 4, 53, 59-60) A gift of real property will never be presumed but must be proven conclusively, particularly where, as here, the purported grantor was dead at time of taking testimony. (R. 31) *Todd* v. *Hyzer*, 154 Fla. 702, 18 So. 2d. 888, 890; *Garner* v. *Bemis*, 81 Fla. 60, 87 So. 426, 427. The decree was contrary to the findings and recommendations of the Special Master. (R. 53-55).

4. The parties relied upon title from a common source, by deeds executed, delivered and recorded the same day, March 15, 1930. (R. 155, 174) The Special Master held that petitioners' predecessor in title, Lauderdale-by-the-Sea Development Company paid valuable consideration and executed a purchase money mortgage encumbering said land. Said mortgage was recorded prior to either of the deeds. (R. 170). The prior recording of said mortgage was constructive notice to all others. *Equitable Building & Loan Assn.* v. *King*, 48 Fla. 352, 37 So. 181, 183. The Special Master held that any title the former municipality may have acquired by reason of the deed to said Town having been recorded ahead of the said corporations deed, that such title was held in trust, under a resulting trust for the benefit of said corporation. (R. 53-54, 144)

5. Said corporation acquired title to all of Government Lots 1 and 2, Section 18, Township 49, South Range 43 East, Broward County, Florida, embracing the entire subdivision of Lauderdale-by-the-Sea. P. B. 6, page 2. (R. 169, 174) Certain platted lots were excepted. Block 23 was not excepted but was included, both in the deed and in the purchase money mortgage. (R. 170) The said Block 23 was platted for a hotel site and at all times intended for such use. (R. 169, 174, 157, 153) As part of the consideration for said land to be conveyed to said corporation, it was agreed that it would pay the delinquent taxes represented by outstanding tax certificates. The sum of $224.31

was paid by Anglin to redeem the tax certificates upon Block 23 prior to deed. (R. 192-193) Title was taken in the name of the corporation composed of S. A. Anglin, E. N. Farber and M. I. Anglin. Said M. I. Anglin did not, and as minority stockholder could not, make a gift of the corporation's property. (R. 217-220)

6. The conveyance by Lauderdale-by-the-Sea Development Company on January 5, 1931 to Las Olas Construction Co. of a determinable fee title for use as a hotel site, with automatic revester clause effective March 15, 1931 did not divest the grantor of title, when the conditions of the conveyance were not met, and the title automatically revested in the grantor without the necessity of any reconveyance. (R. 50, 93, 178) *Richardson* v. *Holman*, 160 Fla. 65, 33 So. 2d. 641, 643. The conditional grantees' quit claim deed back to the former town was a nullity. (R. 50, 159)

7. Petitioners M. H. Demko and R. F. Lunsford, as Trustees as successors in title to Lauderdale-by-the-Sea Development Company, proved title to the land, and the final decree arbitrarily deprives them of their property, contrary to law and to the Constitution of the United States, Article 1, Section 10, and the Fourteenth Amendment. (R. 13-14, 239)

Conclusion

For the foregoing reasons, this petition should be granted.

Respectfully submitted,
ALFRED P. DRAPER and
JOSEPH A. FITZSIMMONS

By_____
Counsel for Petitioners

Date

APPENDIX

IN THE SUPREME COURT OF FLORIDA
JUNE TERM, A.D. 1952
En Banc

M. I. ANGLIN et ux., et al., *Appellants,*

vs.

LAUDERDAL-BY-THE-SEA, *Appellee.*
BROWARD COUNTY
SUPREME COURT No. 22,976

OPINION—Filed August 5, 1952

An Appeal from the Circuit Court for Broward County,
Joseph S. White, Judge

J. A. Fitzsimmons, for Appellants
Warren O. Windle and Linwood Cabot, for Appellee
HOCKER, *Associate Justice*

This is an appeal from a final decree quieting appellee title as against appellants.

Appellants' contention as to the constitutionality of the legislative acts involved were answered adversely in M. H. Demko et al. v. Harry A. Judge et al., in the opinion filed April 23rd, 1952.

The lower court in its decree which we approve, said "If defendants (appellants) have any title at all it must rest either upon the deed of conveyance from the Town to Anglin, dated January 27th, 1940, or upon the trust theory recognized by the Master.

"Unquestionably the deed of conveyance is void because

the purported grantor was not in existence. The Town had been abolished by act of Legislature and had no legal status by which it could become grantor in a conveyance of real property. The trust theory cannot stand because there isn't the slightest inference that Anglin intended to retain any interest in the property when it was conveyed to the Town in 1930. True, it is that Anglin paid the consideration for the transfer, but the only inference which can be drawn from this record is that an absolute gift was intended. The Town had no power to accept lands as 'trustee', nor to hold the naked legal title thereto for the benefit of some particular individual.

"Constructive or resulting trusts are recognized when it is equitable or just to do so to prevent a fraud or unjust enrichment. No such case is made here and the conclusion is inescapable that the absolute title to the lands passed to the Town."

The decree appealed from is affirmed.

Sebring, C. J., Terrell, Thomas, Roberts and Mathews, J. J., Concur.

IN THE SUPREME COURT OF FLORIDA
JUNE TERM, A.D. 1952

Tuesday, October 14, A.D. 1952

M. I. ANGLIN, et ux, et al, *Appellants*,

vs.

LAUDERDALE-BY-THE-SEA, a Municipal Corporation, *Appellee.*

Counsel for M. H. Demko as Trustee and R. F. Lunsford as Trustee, having filed in this cause Petition for Rehearing and having been duly considered, it is ordered by the Court that said Petition be and the same is hereby denied.

A true copy,

TEST:

/s/ Guyte P. McCord
Clerk Supreme Court

(Seal of the Supreme Court of Florida)

(THE MANDATE IN THIS CAUSE HAS TODAY BEEN ISSUED AND MAILED TO THE CLERK OF THE CIRCUIT COURT FOR BROWARD COUNTY)

APPENDIX A

Chapter 24658, Laws of Florida 1947, (Special Acts), Article 1, Sections 5 and 7, provided as follows: (R. 165)

> "Section 5: That all lands heretofore dedicated for the use of the public for streets, highways, parks or public grounds and all authorized changes or amendments thereto approved by the Board of County Commissioners of Broward County, Florida, whether by plat, act or otherwise, are hereby vested in the Town of Lauderdale-by-the-Sea, and the control and jurisdiction thereof shall hereafter be vested in the Town Commissioner of the Town of Lauderdale-by-the-Sea.
>
> * * *
>
> "Section 7: The Board of County Commissioners of Broward County having been appointed and designated as Board of Trustees by virtue of Chapter 16531, Laws of Florida, 1933 are hereby discharged and released from their duties as Trustees over the lands contained within the territorial limits of the Town of Lauderdale-by-the-Sea and described in Article 1, Section 1 of this charter, and all acts performed as such Board of Trustees are hereby confirmed and approved."

Chapter 16531, Laws of Florida 1933 (Special Acts), abol-

ishing the former Town of Lauderdale-by-the-Sea, Sections 2, 4 and 5, provided as follows: (R. 161)

> "Section 2. That all lands heretofore dedicated to the use of the public for streets, highways, parks or public grounds, whether by plat, use or otherwise, shall become vested in Broward County, Florida, and the control and jurisdiction thereof shall be vested in said county.
>
> * * *
>
> "Section 4. That all real property not dedicated to the use of the public and all personal property, uncollected taxes, tax certificates, dues claims, judgments, decrees, and choses in action held and owned by the said Town of Lauderdale-by-the-Sea shall pass to and be vested in said Board of Trustees in trust for the protection of said municipality.
>
> "Section 5. That the Board of County Commissioners of Broward County, Florida, as said Board of Trustees, shall have all the powers heretofore possessed by the said Town of Lauderdale-by-the-Sea with regard to the sale of real and personal property of said municipality and with regard to the assessment and collection of Taxes; provided, however, that said Board of Trustees shall only have the right to sell the real and personal property of said municipality and/or to assess and collect taxes in the event it is necessary to do so for the protection of the creditors of said municipality and to pay the just debts of said municipality."

APPENDIX B

Findings of Fact and Conclusions of Law
By Special Master in Chancery

1. The equities of this cause are with the defendants M. I. Anglin and Sarah A. Anglin, also known as S. A. Anglin, husband and wife; M. H. Demko, as Trustee for M. I. Anglin

and S. A. Anglin, R. F. Lunsford, T. R. Anglin and E. M. Sizemore; R. F. Lunsford, as Trustee for M. I. Anglin, S. A. Anglin, M. H. Demko, J. W. Anglin and B. M. Bickelman.

2. The plaintiff is not a purchaser for a valuable consideration without notice, and cannot rely upon the recording statute to bar the claims of the defendants. Section 695.01, Florida Statutes 1949.

3. Any title to the lands in question which may be in the plaintiff is held under a resulting trust for the benefit of the defendants.

> (1) "A resulting trust arises where a person makes or causes to be made a disposition of property under circumstances which raise an inference that he does not intend that the person taking or holding the property should have the beneficial interest therein, unless the inference is rebutted * * *."
>
> (2) Restatement, Trusts Sec. 404, "Where a transfer of the property is made to one person and a part of the purchase price is paid by another, a resulting trust arises in favor of the person by whom such payment is made in such proportion as the part paid by him bears to the total purchase price, unless he manifests an intention that no no resulting trust should arise or that a resulting trust to that extent should not arise."
>
> Restatement, Trust Sec. 454.

The above is quoted from *Johnson* v. *Craig*, (Fla. 1946) 28 So. 2d. 696, 698.

The defendants have shown that M. I. Anglin paid valuable consideration for the lands in cnotroversy. Title to the land was taken in the predecessor of the defendants and such land was subject to the lien of a purchase money mortgage which was released upon the property in question to the predecessor of the defendants. Inclusion of the name for the former municipality in the title of the land is explained by the defendants as being for the purpose of encouraging the construction of a hotel as is evidenced by the instruments themselves.

Plaintiff's objection to the proffered testimony of J. B. Hoyl in this regard on page 204 of the transcript is overruled and such testimony is admitted in evidence.

M. I. Anglin and his wife, Sarah A. Anglin, constituted two out of the three commissioners for the municipality of Lauderdale-by-the-Sea which was named in the chain of title to this land. These parties were also two of the three incorporators of Lauderdale-by-the-Sea Development Corporation which received title to most of the lands involved in the purchase from Messrs. Moody and Gregory. This condition continued until after the abolition of the municipality by Chapter 16531, Laws of Florida 1933. Because of the absolute control by M. I. Anglin and Sarah A. Anglin over the affairs of the then municipality, the facts show no intention that the municipality should have a beneficial interest in the lands in controversy, and this inference has not been rebutted by the plaintiff.

That the Lauderdale-by-the-Sea Development Company and its successors in title intended to hold the beneficial interest in these lands is evidenced by the subsequent efforts to convey title by the abolished municipality and by the payment of taxes thereon.

4. The Plaintiff has shown no equities in its behalf.

Its title, if any, was received by virtue of Section V of Chapter 24658, Laws of 1947, above quoted, and without the payment of any consideration therefor.

There is no showing that either the present or the abolished municipality paid any consideration for these lands.

Section V of Chapter 24658 conveys to the plaintiff only the lands which had theretofore been dedicated for the use of the public for street, highways, parks or public grounds, and there is no showing that the lands in question were dedicated for any public use whatsoever.

There is no showing that the plaintiff made any claim of title to these lands prior to the filing of this suit, and such was

done after the assessment of taxes thereon to the predecessor of the defendants.

5. The defendants have attacked the validity of Chapter 16531, Laws of 1933, abolishing the municipality which was created under Chapter 14184, Laws of 1929, and has assailed the validity of the existing town of Lauderdale-by-the-Sea. Chapter 16531, laws of 1933, and Chapter 24658, Laws of 1947, are both found to be constitutional and the attacks made by the defendants against them and the proceedings of the existing municipality are found to be without merit. Such findings are upon the authorities cited in the report by this Special Master in the companion case of *M. H. Demko, et al* v. *Harry A. Judge* as Tax Collector, etc., in this court in Chancery No. 14513.

Recommendations

It is recommended that

A. Plaintiff's bill of complaint be dismissed with prejudice.

B. The defendants be allowed to file a counterclaim to quiet their title to the lands in question, and a decree then be entered quieting such title against the plaintiff and the other parties defendant.

C. The costs of the proceeding be taxed to the plaintiff.

Respectfully submitted,

/s/ RUSSELL MCCAUGHAN,
Special Master

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR BROWARD COUNTY.
IN CHANCERY.

No .14,107

LAUDERDALE-BY-THE-SEA, a municipal corporation,
Plaintiff,

vs.

M. I. ANGLIN, et al., *Defendants*.

Final Decree

This cause came on for the entry of final decree upon the pleadings, testimony and the findings and recommendations of the Special Master. Each party has excepted to the Master's findings. The matter was duly argued and has been considered by the Court.

The Master has found that defendants' title is superior to that of plaintiff's. If defendants have any title at all it must rest either upon the deed of conveyance from the Town to Anglin, dated January 27th, 1940, or upon the trust theory recognized by the Master.

Unquestionably the deed of conveyance is void because the purported grantor was not then in existence. The Town had been abolished by Act of the Legislature and had no legal status by which it could become grantor in a conveyance of real property. The trust theory cannot stand because there isn't the slightest inference that Anglin intended to retain any interest in the property when it was conveyed to the Town in 1930. True, it is that Anglin paid the consideration for the transfer, but the only inference which can be drawn from this record is that an absolute gift was intended. The Town had no power

to accept lands as "trustee", nor to hold the naked legal title thereto for the benefit of some particular individual.

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Constructive or resulting trusts are recognized when it is equitable or just to do so to prevent a fraud or unjust enrichment. No such case is made here and the conclusion is inescapable that the absolute title to the lands passed to the Town. Thereupon,

It is ORDERED AND DECREED that plaintiff's exceptions to the Master's report are sustained; that defendant's exceptions are overruled; that the title to the lands described in the bill of complaint are vested in the plaintiff, freed of any claim of the defendants, and defendants' purported right, title or claim thereto is void and shall stand for naught.

Court costs, including a fee to the Special Master of $250.00 are assessed against the plaintiff.

Copy furnished counsel.

DONE AND ORDERED, this October 8th, A.D. 1951.

/s/ Jos. S. WHITE,
Circuit Judge

Order Denying Petition for Rehearing

This cause was heard upon due notice, upon defendants' Petition for Rehearing, and argument of counsel.

Defendants have argued that the inclusion of Block 23 in the conveyance of March 14, 1930, from Moody and Gregory to the Town, was an error of the scrivener. But such a position does not seem consistent with the fact that when on March 1, 1931, it came time for a reconveyance of the property by Las Olas Construction Company, the deed was made to the Town only. The record clearly indicates that Anglin was aware of

such an arrangement. Apparently, he accepted delivery of the deed and attended to its recording. Thus, he recognized the Town's rightful title to the property.

THEREUPON, IT IS ORDERED AND DECREED that the Petition for Rehearing is denied.

Copy furnished counsel.

DONE AND ORDERED, this November 26th, A.D. 1951.

/s/ Jos. S. White,
Circuit Judge